IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 387 of 2000.

Judgement reserved on: 1.11.2007.

Date of decision: 2.11.2007.

State of H.P. ….. **Appellant.**

Vs.

Ravi Kumar …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. Varinder Verma, Addl. Advocate General.**

For the Respondent : **Mr. K.D. Sood, Advocate with Mr. Rajnish K. Lall, Advocate.**

Kuldip Singh, Judge.

The State has filed this appeal against the judgement dated 25.11.1999, passed by the learned Judicial Magistrate Ist Class, Manali, District Kullu, H.P. in Criminal Complaint No. 388-1/99/95, acquitting the respondent under Sections 32, 33 of the Indian Forest Act (for short, the Act).

2. The prosecution case in brief is that on 1.9.1993 Nand Lal, Forest Guard of Patli Kuhal beat was intimated through application that respondent –accused Ravi Kumar encroached the land and illegally cut ten pine trees. He was questioned and he

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Whether the reporters of the local papers may be allowed to see the Judgment?

confessed his guilty in writing and agreed to pay compensation amounting to Rs. 5618/- for cutting the trees, but actually did not pay. After completion of the investigation, challan was put up against the respondent and notice of accusation was put to him under Sections 32, 33 of the Act, to which he pleaded not guilty and claimed trial.

3. The prosecution examined five witnesses, the respondent was examined, under Section 313 Cr.P.C. in which he denied the case of the prosecution, but led no evidence in defence. The learned trial Magistrate acquitted the respondent on 25.11.1999, hence the State has come in appeal.

4. I have heard the learned Additional Advocate General for the State and Mr. K.D. Sood, Advocate with Mr. Rajnish K. Lall, Advocate, for the respondent. The learned Additional Advocate General has submitted that prosecution has proved the case beyond reasonable doubt, the respondent has confessed his guilt. The learned trial Magistrate has erred in acquitting the respondent. The learned counsel for the respondent has supported the impugned judgement and has submitted that the prosecution has failed to make out any case against the respondent. It has not been proved that from where the trees were allegedly cut. The notification, under Sections 32, 33 of the Act has not been proved. The leaned Magistrate has rightly appreciated the material on record.

5. PW 1 Nand Lal, Forest Guard has stated that on 1.9.1993, he was patrolling in beat Bara Garh and found that respondent had cut ten pine trees of 5th class and had encroached upon 10 to 12 biswas of area by planting 20 apple trees. He called

the respondent and when he questioned him, the respondent admitted the encroachment and agreed to vacate the encroachment and to pay damages. He issued damage report Ex. PA and respondent admitted his guilt vide Ex. PB and put his signatures thereon in presence of PW 1 Yog Raj and Gian Chand. He took in possession of 20 pieces of pine trees, vide seizure memo Ex. PD. He sent the damage report Ex. PA to Block Officer. The respondent has vacated the possession of the encroached land, but did not pay any damages. In cross-examination, he has stated that he did not receive any complaint in writing. He also stated that at that time he was accompanied by Block Officer Tara Chand. He did not recover any instrument of cutting from the respondent. The trees were cut about 2-4 days ago. He denied that he obtained the signatures of the respondent by putting him under threats.

6. PW 2 Yog Raj has stated that on 1.9.1993 the respondent was found in illegal possession of forest land in Bara Garh. The respondent had cut pine trees and kept them on one side. The respondent confessed his guilt vide statement Ex. PB. The pieces of the trees were taken into possession, vide memo Ex. PD. The respondent gave another confessional statement Ex. PW 2/A before the Block Officer, which was also attested by him and one Rirku Ram. The respondent has vacated the encroachment. In his cross-examination, he has stated that confessional statement Ex. PW 2/A was prepared at Patli Kuhal in the office of Range Officer. The converted timber was recovered from the orchard of Gian Chand. He

has stated that no written complaint was made to forest officials regarding felling of the trees by the respondent

7. PW 3 Tara Chand, Retired Block Officer has stated that on 1.9.1993, he had gone to Bara Garh (3rd) Kumansiri where the respondent was found in illegal possession of land. The respondent had cut ten pine trees and planted apple plants thereon. On questioning the respondent he admitted his guilt vide confessional statement Ex. PB and put his signatures thereon, he agreed to pay compensation. The converted timber was taken into possession, vide memo Ex. PD. The respondent made another confessional statement, Ex. PW 2/A, in presence of PW 2 Yog Raj and Rirku Ram. In cross-examination, he has stated that he does not know who has written confessional statement Ex. PW 2/A. According to him, trees were cut on 1.9.1993 itself.

8. PW 4 Dhian Singh did not support the prosecution and he was declared hostile. He was cross examined by the prosecution, but nothing favourable to the prosecution was extracted in his cross-examination. He admitted his thumb mark on damage report Ex. PA, but said that he is illiterate and the contents of the documents were not read over to him.

9. PW 5 Vijay Ram has stated that about 2 to 4 years ago, respondent-accused had cut some pine trees from government land, but in cross examination, he has stated that respondent had not cut the trees in his presence.

10. The prosecution has failed to prove that ten pine trees were cut by the respondent from the land in question. There is no

evidence on record to link the trees allegedly cut by the respondent from the land in question . No demarcation of the land from where the trees were allegedly cut has been proved on record. There is nothing on record that the forest in question is a notified protected forest. The notification declaring the forest, in question, as protected forest, has not been placed on record. There is no evidence of circulation of notification, under Sections 32, 33 read with Sections 30 and 31 of the Act in vernacular in the locality. The alleged confessional statements Ex. PA and Ex. PW 2/A are of no help to the prosecution for want of proof of notification, under Sections 32, 33 read with Sections 30 and 31 of the Act and its publication in vernacular in the locality. It has been held in **State of H.P.** vs. **Tara Chand and others** [1994 (4) SLJ 3333] that confessional statements recorded by forest officials are hit by Section 25 of Evidence Act. In the present case also alleged confessional statements Ex. PA and Ex. PW 2/A are recorded by forest officials, therefore, these cannot be used against respondent. It has also not been proved that the trees were cut by the respondent from land notified to be protected forest.

11. PW 1 Nand Lal has stated that the trees were cut 2-4 days ago when they visited the spot on 1.9.1993, but PW 2 has stated that trees were cut on 1.9.1993 itself. It is the prosecution case that respondent has vacated the encroached land. The cutting tools with which the respondent has allegedly cut the trees have also not been recovered. The learned trial Magistrate has appreciated the evidence on record and has taken a possible view. No case for

interference has been made out. The appeal is accordingly dismissed.

November 2,2007. **(Kuldip Singh)**
(*Hem*) **Judge.**